



Application of Justice Health, re a Patient

(2011) 80 NSWLR 354; [2011] NSWSC 432

Country: Australia

Region: Oceania

Year: 2011

Court: Supreme Court of New South Wales

Health Topics: Chronic and noncommunicable diseases, Informed consent, Prisons

Human Rights: Right to bodily integrity, Right to health

Facts

An inmate in a correction centre (the "patient") had end-stage lung cancer with, at best, weeks to live. The patient was incompetent to give consent or refuse any medical treatment and had no guardian who could provide substituted consent. The unanimous medical opinion was that further active treatment would be futile, and additional medical opinion expressed that continuing treatment would not be in the inmate's best interest and that the patient should be allowed to "die with dignity". The petitioner, the institution having medical care and responsibility of the patient, requested the court's declaration that it may lawfully discontinue all life sustaining treatment and issue a "not for resuscitation order" in respect to the patient.

The relevant law provided that "an inmate must be supplied with such medical attendance, treatment and medicine as in the opinion of a medical officer is necessary for the preservation of the health of the inmate . . .".

Decision and Reasoning

The court expressed suspicion regarding the medical practitioners' conclusion that treatment would not be in the patient's "best interests" and that the patient should be allowed to "die with dignity", but confirmed the importance of the fact that further treatment would be futile. The court noted that, in the usual cases of a patient's incompetence to consent to medical treatment, an application to the court would typically be necessary as providing treatment in absence of such court order would constitute an assault. However, the present fact pattern did not involve the proposition of giving invasive therapy to the patient which, in absence of consent, would constitute an assault, but rather the proposition of withholding treatment.

The court further noted that a patient does not have the right to insist on being given a particular treatment, but simply the right that the medical practitioner use reasonable and professional care in the interests of such patient's well-being and that it would be unusual for the court to require a medical practitioner to give the patient a particular form of treatment which such medical practitioner genuinely and reasonably thought was not appropriate. Finally, the court pointed out that those who might be expected to have an interest in the patient's care and welfare (i.e., his family) did not wish to be involved in the decision-making process, so there were no objectors.

Ultimately, the court held that treatment which is futile and merely prolongs life without quality is not necessary for the "preservation of health" as required by the relevant law. Thus, the petitioner did not need to continue futile treatment and resuscitate the patient.

Decision Excerpts

"6. Another basis upon which it might be put that resort to the Court was necessary was to clarify whether, consistent with the law, the medical authorities could withhold treatment. Just as lawyers are not expected to be their client's mouthpiece only, but bring to the task professional judgment, so medical practitioners are not the mere instruments of their patients, at their patient's behest, but are also expected to bring to their tasks professional medical judgment. No patient has a right to insist on being given any particular treatment. The patient's right is that the medical practitioner use reasonable professional care in the interests of the patient's health and wellbeing. A patient is not entitled to insist on being prescribed particular drugs or receiving particular treatment but to that treatment, which the medical practitioner, using reasonable care, judges is best for the patient in the circumstances."

7. It seems to me that it would be a rare case in which the Court would, by mandatory injunction, require a medical practitioner to render to a patient a particular form of medical treatment, which the practitioner genuinely and reasonably thought was not warranted or appropriate in the circumstances. It may be that there are some cases in which unanimity of medical opinion would be such that no other course of action than administering a particular form of treatment would be justifiable but this, at least, is not one of them.

14. In my view, treatment that is futile is not treatment that is necessary for the preservation of health. The mere fact that the treatment might prolong life, by hours or days, without quality, does not make it treatment that is necessary for the preservation of health. Although life and health are closely associated, there is a distinction between treatment necessary for the preservation of health, and treatment that might achieve the mere prolongation of life.

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